

**REMARKS/ARGUMENTS**

Claims 25-31 and 45-60 are pending. By this Amendment, claims 26 and 29 are amended, claims 45-60 are added, and claims 1-24 and 32-44 are canceled, subject to filing in one or more divisional/continuation applications. Reconsideration and withdrawal of the rejection are respectfully requested.

Claims 10 and 37 were rejected under 35 USC §112. This rejection is rendered moot by the cancelation of these claims.

Claims 1, 3-12, 26-29 and 31-36 are rejected under 35 USC §102(b) over Lang et al. (EP 1 099 452). This rejection is respectfully traversed.

At the outset, it is noted that the Office Action points to several embodiments within the disclosure of Lang et al. in order to support the rejection. For example, in regard to the rejection of independent claims 1 (canceled), 26 and 29, the Examiner points to Figures 1a and 1e, as well as of Figure 7 of Lang et al. to support the rejection. Thus, it appears that the Examiner is attempting to combine various embodiments to reject the claim, but the Examiner has not resolved the differences between the claims and the Figure 1a/1e embodiment, and has not providing any reason why one of ordinary skill in the art would have combined the Figure 1a/1e embodiment with the embodiment of Figure 7. Thus, the examiner simply picks and chooses various elements of two distinct embodiments in order to reject the claims. It should be noted that the Examiner's attempt to combine different embodiments in the same reference is no different than an attempt to combine two different references. The Examiner's apparent position that the two embodiments when taken together constitute a valid rejection based on anticipation is clearly erroneous.

Even if it would have been obvious to have made the combination, which Applicants do not concede, Lang et al. does not teach that the zone of thickened cross-section includes a gel-like crosslinked elastomer body inserted into a fixing structure provided in the internal space of the mask. The Examiner apparently disregarded the original language from the claim as directed to a product-by-process. This interpretation is respectfully traversed and in any event is obviated by the clarifying amendment to claim 26 herein, which even more particularly requires the Examiner to consider the recited features.

In regard to claim 29, Lang et al. does not disclose either that 1) provided in the mask pad is at least one closed receiving pocket portion and 2) provided in said receiving pocket portion is a cushion body comprising a gel material. Lang et al.'s element 34 is not a closed pocket, and paragraph [0041] does not disclose a gel.

In regard to independent claim 31, Lang et al. do not disclose a forehead pad for a breathing mask comprising a forehead pad base body which is made from an elastomer material and has a coupling portion for fixing the forehead pad to a forehead support device and a stem portion for radially yieldingly mounting a forehead contact portion provided for bearing against a forehead surface, wherein the forehead pad has a zone of thickened cross-section and in said zone is provided with a gel or foam material. Lang et al. does not disclose a forehead pad, or a stem, of that the forehead pad has a zone of thickened cross section which is provided with a gel or foam.

Reconsideration and withdrawal of the rejection are respectfully requested.

Claims 2 and 30 were rejected under 35 USC §103(a) over Lang et al. in view of US 2009/0178679 to Lithgow et al. However, this rejection is respectfully traversed as Lithgow et

al. qualifies under 35 USC §102(e) and is commonly owned with Lang et al., thus making it ineligible for combination with Lang et al under Section 103(a), per MPEP 706.02(k).

Claim 25 was rejected under 35 USC §103(a) over Lang et al. in view of Le Mitouard (US 5,429,683). This rejection is respectfully traversed.

Claim 25 specifies a sealing lip of an elastomer material and a thickened section having a foam cushion. The Lang et al./Le Mitouard combination does not teach this subject matter. Lang et al. teaches a combined elastic material and gel-like material. Any motivation to combine Lang et al. with Le Mitouard would result in a cushion having a foam (only) construction, not an elastomer and a foam combined, as Le Mitouard emphasizes that the foam lining includes a tubular end piece 8 that engages with the shell – this at best suggests to replace Lang et al.'s entire sealing structure, not just parts thereof, with a foam. There is simply no reason why one of ordinary skill in the art would have substituted the gel-like material in Lang et al. Figure 7 with a foam.

Reconsideration and withdrawal of the rejection are respectfully requested.

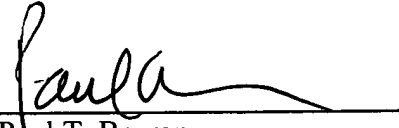
New claims 45- 60 are presented for the Examiner's consideration and read on the elected invention/species. The examiner is required to examine "mask" claims 59 and 60 as these are combination claims that include all the particulars of subcombination claim 57.

The Commissioner is hereby authorized to charge any deficiency, or credit any overpayment, in the fee(s) filed, or asserted to be filed, or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Account No. 14-1140 under Order No. PTB-4750-23.

LANG et al.  
Appl. No. 10/517,342  
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Respectfully submitted,

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